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JOHN MARSHALL, SIDNEY BREESE, AND ILLINOIS' FIRST LAW BOOK

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THE MODERN AMERICAN LAWYER, surfeited by an overplus of library materials from which to make his selection of appropriate law on any given topic,¹ is not likely to give much thought to an earlier day when law books were few in number and those few were, too often, accessible only to a small segment of the bench and bar.² Before the advent of modern publishing houses, with their spawn of reports, treatises, encyclopedias, annotations, citators, and

EDITOR'S NOTE: This article will serve as a footnote to the current celebration of the bicentennial anniversary of the birth of the revered John Marshall, Chief Justice of the United States Supreme Court from 1801 to 1835. The topic for this paper was suggested by Roger L. Severns, member of the Chicago Bar and Professor of Law at Chicago-Kent College of Law, whose research in connection with the preparation of a history of the Illinois Supreme Court led to the discovery of some hitherto unpublished correspondence between the Chief Justice and Sidney Breese (A.D. 1800-1878). Judge Breese, prior to becoming justice and Chief Justice of the Illinois Supreme Court, compiled and published the first volume of the decisions of that court, a book customarily cited as 1 Ill. (Breese).

* Professor of Law, Chicago-Kent College of Law. The writer expresses indebtedness to Mrs. Katharine Dixon Agar, LL.B., Chicago-Kent College of Law, member of the Illinois bar, and one of the members of the United States Commission for the Celebration of the Two Hundredth Anniversary of the Birth of John Marshall, organized pursuant to S.J. Res. 149, 83rd Congress, for assistance in the preparation of certain of the material herein.

¹ The surfeit has, if anything, given rise to the complaint that the lawyer is being engulfed beneath a flood of books. See Jacobstein, "Scientific Aids to Legal Research," 31 CHICAGO-KENT LAW REVIEW 236-45 (1953).

² Roalfe, *The Libraries of the Legal Profession* (West Publishing Co., St. Paul, 1953), at p. 9, notes that, in the "days of John Marshall, the American lawyer no doubt sometimes suffered from a dearth of authorities but, at any rate, he could, if he wished, have virtually all of the books available in his own personal library." The size and value of certain of the colonial law libraries is discussed by Steiner, "Law Libraries in Colonial Virginia," 9 Green Bag 351 (1897).

loose-leaf services, the chief tools of the lawyer necessarily consisted of an appeal to the powerful force of logical reasoning and a convincing command of language, for it was not always possible, at that time, to appeal to precedent even though the doctrine of *stare decisis* had long been a corner stone in the Anglo-American legal structure. It was in that period, therefore, that men like John Marshall, often without the acknowledged aid of books, or of not more than a handful of books at best, worked out those basic ideas of law to which men still turn in appeal today.

It was not then the case that great judges had little regard for the comforting assurance of suitable precedents but rather the fact that the materials of the law existed in only the most sketchy of forms and these, too frequently, not at hand when the time came for decision. As one Illinois judge once expressed it, a determination in a tremendously important case was anxiously pressed for at a time when the court was able to give to the subject only that "investigation which the shortness of time and the almost total absence of law books and other sources of information" would permit. Nevertheless, he expressed the belief that if the court, "laboring under such great disadvantages . . . should err in the conclusions to which [the judges] shall arrive, they have no doubt that the error will meet, in the bosoms of the intelligent and the honest, with a ready and satisfactory apology."³ The thought so expressed leads, quite naturally, to an inquiry as to the extent of the materials which judges of the Marshall era, including the great Chief Justice himself, might have been able to consult as they went about the task of formulating their decisions.

It has been said that the great law book of the late colonial period, and for the fifty or more years which followed the Revolution, was Blackstone's commentary of the laws of England. Here, without question, the prominent figures of the revolutionary period learned much concerning the rights of Englishmen and Thomas Marshall, father of the Chief Justice, may have been a

³ Lockwood, J., in *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 106 (1825).

reader thereof as well as being instrumental in seeing to it that his son examined its treasured pages.⁴ Slightly later came Chancellor Kent's own monumental work, fashioned on a similar style,⁵ but it was not out of these alone, or out of the other available treatises,⁶ that the early American judges wrought their holdings for evidence abounds that, in the bulk of the instances and except for some of the older colonies, their opinions display an almost complete absence of citation to authority but a surprisingly strong appeal to the force of reason.⁷

Without detracting from the value of these important early law books, it is now possible to note the probable extent of the access which some of these pioneer judges, particularly those in Illinois, had to legal materials. Before doing so, however, it would be proper to bring to the scene one who, both in years and experience, duplicated at the state level a record closely akin to that made by the great Chief Justice himself. Born in 1800 in New York and related to the celebrated Livingston family, Sidney Breese came to Illinois not long after the time when the state had been added to the Union and promptly became an outstanding member of the state bar.⁸ In the years which followed until his

⁴ Beveridge, *Life of John Marshall*, Vol. I, 56, says that one of the original subscribers was "Captain Thomas Marshall, Clerk of Dunsmore County, Virginia," who saw to it that his son read Blackstone "as carefully as circumstances permitted."

⁵ The first volume of Kent's *Commentaries on American Law* was published in November, 1826. The later volumes were not issued until about the close of the period covered in this paper.

⁶ The early decisions of the United States Supreme Court contain references to writers like Vattel, Grotius, Bynkerhoff, Puffendorf and others.

⁷ In a letter to the author, Professor Arthur Bestor of the Department of History, University of Illinois, co-author with others of the recently published *Three Presidents and Their Books* (University of Illinois, 1955), indicated that it was his feeling that the absence of detailed citation in the opinions of John Marshall was "a matter of deliberate choice on his part, the opinions being addressed to an audience larger than the legal profession." In contrast to the work of his associate Justice Story, who meticulously searched for and cited authorities, it is a fact that Marshall could, and did, deliver five major constitutional opinions without citing a single earlier case as precedent.

⁸ *Dict. Am. Biog.*, III, 14, indicates that he was admitted to the Illinois bar in 1820 but "lost his first case through stage-fright and came near to abandoning the profession." His name first appears as counsel in the case of *Mears v. Morrison*, 1 Ill. (Breese) 223 (1827). Among the cases listed in that volume, he appears to have argued on one side or the other in a total of fifteen cases, being successful in nine of them. Marshall, on the other hand, appears to have lost the only case in which he appeared as counsel before the United States Supreme Court, that of *Ware, Adm'r v. Hylton*, 3 Dall. 199, 1 L. Ed. 568 (1796).

death in 1878, he served as a practitioner at the bar, as an officer in the militia, as assistant secretary of state, as a public prosecutor, as a representative in, and Speaker of, the state legislature, as a member of the United States Senate,⁹ as judge of the circuit court, and finally as justice and chief justice of the Illinois Supreme Court.¹⁰

He is, quite properly, remembered for having been the first man to propose a transcontinental railroad to the Pacific Ocean¹¹ and for his twenty-five years of service on the Supreme Court bench,¹² but his eminence, for this purpose, is marked by the fact that, except for the few printed volumes of the legislative proceedings which preceded it, he published the first law book ever printed in the state of Illinois, a slender volume of the reported decisions of the Illinois Supreme Court from its first term in December, 1819, to the conclusion of the December term in 1831, which report he garnished with certain supplementary notes of his own devising.¹³

In a preface to that book, Sidney Breese, with a sense of modesty proportionate to his own great reputation, explained his

⁹ He was a contemporary of men like Clay, Webster and Calhoun.

¹⁰ Much of his personal history is recorded in the twenty-four pages of memorial proceedings conducted before the Illinois Supreme Court on October 1, 1878, set forth in 90 Ill. xi-xxxv. See also Dict. Am. Biog., III, 14, and an essay by Stephen Strong Gregory in *Great American Lawyers* (John C. Winston Co., Philadelphia, 1908), Vol. 14, p. 453, at which place is a reproduction of a photograph of Judge Breese taken in his later years.

¹¹ As chairman of the Committee on Public Lands, United States Senate, he did, in 1846, present an elaborate, detailed report advocating the construction of such a railroad some 23 years in advance of the actual commencement thereof. He was also instrumental in advancing the plan for the construction of the Illinois Central Railroad from Cairo to Galena.

¹² He was first appointed in 1841, following the reorganization of that court, but left in 1843 to become United States Senator from Illinois. He returned to the court in 1857 and served continuously thereafter until his death in 1878. Marshall's period of judicial service, one of the longest in the annals of American jurisprudence, ran for thirty-four years.

¹³ It should be mentioned that few copies of the original work by Breese, as published in 1831, are now in existence. Most collections of the state reports begin with a reprint thereof, made pursuant to an act of the legislature to be found in Ill. Laws 1861, p. 73, compiled by Edwin Beecher, who supplemented Breese's notes with a substantial amount of additional and later information. This book, published in 1861, or the second edition thereof published in 1877 by Callaghan & Company, Chicago, found in most sets of the Illinois reports, is usually cited as 1 Ill. (Beecher's Breese). For practical purposes, it is identical with the original Breese volume except for the one or two minor interpolations made in the text and referred to in the preface by Edwin Beecher to the 1877 second edition at pp. v-vi.

authorship as having been undertaken with diffidence but resting on the fact that books of reports were of great utility to the legal profession, particularly in countries where the law serves as the rule of action, for it was of the utmost importance that the rules should be both "certain and known." He pointed out that it was for the legislature to enact laws but for the courts to expound upon them and to make them effective so that, if these expositions remained unpublished, "much mischief and litigation [would] be the consequence." Although it was the first publication of the kind ever attempted in the state, as well as the author's first essay at publication, a fact which he was convinced would not, as he said, "add to my reputation as a lawyer," he submitted the work to the candor of his professional brethren from the desire to discharge "in some degree, that duty, which one of the sages of the law has said, every man owes to his profession."¹⁴

There is evidence enough, both from Breese's notes and from language contained in the reported opinions within that volume that John Marshall was no unknown figure to the legal profession of that early Illinois period and that his reputation was as great then as it is today.¹⁵ Despite political differences existing between Breese and Marshall, it is not surprising to learn from some hitherto unpublished correspondence between them that when Breese was in Washington in 1834, not long after his book was published, he made a presentation of a copy thereof to the Chief Justice. On March 18th in that year he wrote

Brown's Hotel

Washington City, March 18, 1834

Honbl John Marshall

Chief Justice of the Supreme Court—

Sir: The imperfections of the accompanying volume, numerous and glaring as they are, will I am assured,

¹⁴ The quotations in this paragraph have been taken from the preface by Breese, written at Kaskaskia in 1831, appearing in 1 Ill. (Breese) iii-iv. The author must have been familiar with the contents of the New York reports by Johnson, for much the same thought is expressed in the preface to 1 Johns. Rep. 6, where the duty mentioned is ascribed to Lord Coke.

¹⁵ Details on this point are supplied hereafter at note 51, post.

be regarded by you with an indulgent eye. The only design of the author in presenting it, is to offer a slight token of the high regard he has ever entertained for your distinguished talents and eminent public services, and as such he prays you to accept it.

He joins most cheerfully in the united voice of his countrymen in bearing testimony to your sterling worth and your many virtues, and with them most fervently hopes, that as your meridian sun shone in splendor, so may its evening setting be without a cloud.

(signed) Sidney Breese of Illinois.

After making due allowance for the florid statement common at that period, the respect held by a prairie lawyer for an esteemed and truly great judge still shines through the words so written.

Promptly on the next day, Marshall replied in his own handwriting by a sealed note which read

Washington, March 19th, 1834

Sidney Breese esquire

Sir: I have just received your letter of yesterday accompanied by Breese's reports. I thank you for this polite mark of your attention and shall value these reports still the more highly because they are presented by the author.

I beg you to believe that I am truly grateful for the flattering and partial sentiments for me which are expressed in your letter and to believe that I am with great and respectful esteem

Your Obedt

(signed) J. Marshall.

The gift copy so presented and acknowledged cannot now be identified as being in either the library of the United States Supreme Court or the Marshall collection in the Library of

Congress but for a brief historical moment the minds of two illustrious American judicial figures met over its pages.

Turning to that first volume of reports, one would soon notice that, if any apology is needed for the character of the work turned out by the Illinois Supreme Court in its early days, the apology must rest on the fact that, for many of those years, the court sat in a place "remote from the means of information, where there [was] not even an ordinary law library and no conveniences for examination or reflection."¹⁶ Nevertheless, in the twelve-year period covered by Breese, the court handed down a total of not less than 178 decisions¹⁷ including among them some which, by the sheer force of compelling logic, remain as precedent today.¹⁸

In one hundred and twenty-one of these decisions, no reference whatever is made to precedent of any kind other than the citation, where proper, of the local statute being construed or applied, so it is likely that the court had no external aid for the results there accomplished. As nine of the other cases were settled on the basis of earlier Illinois holdings known to the court, reference to external citation, usually described today as being of persuasive authority at best, is to be found in no more than forty-eight of the opinions rendered during the entire period.¹⁹ During the first two terms, held at Kaskaskia, the court must have been without

¹⁶ Preface by Breese, 1 Ill. (Breese) iii.

¹⁷ While Breese was engaged in compiling these decisions he made note of the absence of any cases for the December Term, 1821, except for one opinion in a case which he marked as being "of no importance, and is therefore not reported." See note in 1 Ill. (Breese) at p. 36. Before publication occurred, however, the explanation was at hand, so an advertisement was added to the bound volume which stated: "Since the completion of this work, I have learned that the decisions made at December Term, 1821, were consumed in the burning of the bank house, where the records of the Supreme Court were kept. For apology for any other omission, I have to say, that every case is reported, that could, upon diligent search and inquiry, be found among the remaining records of the Court."

¹⁸ In a case discussion appearing later in this issue, based upon the holding in *Voss v. Tennessee*, — Tenn. —, 270 S. W. (2d) 644 (adv.) (1954), the author makes note of the fact that, during practically its entire history as a state, Illinois has followed, without question, the rule first laid down in the case of *Nomaque v. People*, 1 Ill. (Breese) 145 (1825), concerning the right of a defendant in a criminal case to poll the jury after return of the verdict.

¹⁹ Only one reference, to be found in the case of *Cornelius v. Boucher*, 1 Ill. (Breese) 32 (1820), appears in the first 31 cases decided by the court in the five terms ending with the December Term, 1822. Thereafter, the pace of external reference appears to have been accelerated, possibly as more law books reached the frontier community.

books of any kind, if the absence of citation may be said to be indicative of anything. Following removal of the court to Vandalia, however, the judges must have had access to books of some kind for, in the ensuing years, a total of 142 references were made to the holdings in cases decided outside of Illinois or to statements appearing in legal treatises.

One might be led to think, from the wide-spread nature of the precedents cited, particularly toward the end of the period, that the court had at hand a library which included all of the English reports published in the private reporter period,²⁰ most of the sets of American reports which had been issued to that time, and a fair number of texts, in addition to the expected works of Blackstone and Kent. It is extremely doubtful, though, that such was the case for, as one bears in mind the court's own lament against the "almost total absence of law books and other sources of information,"²¹ this widely ramified appeal to external authority becomes suspect. On analysis, then, it can now be said that most of the citations employed can be traced to a mere handful of volumes from which the court probably gleaned its information although it did not, perhaps for the sake of adding weight to support its various holdings, always disclose the reliance on secondary borrowings.

By way of illustration, mention might be made of the point that the court saw fit to cite no less than nineteen English cases²² but there is evidence that the borrowing came not so much from the original sources as from reports concerning these holdings contained in the decisions of the United States Supreme Court,²³

²⁰ That is, all volumes published after the end of the Year Book series, or from about 1537 A.D., and up to the time under consideration.

²¹ *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 106. The opinion therein was handed down in 1825, after the court had been located at Vandalia for some five years. If then without a library of its own, the court could probably have called upon the resources of the bar and its members which, one would suspect, would have been more ample at the state capital than elsewhere in the state.

²² Details with respect thereto are set forth in Appendix A printed at the conclusion of this paper.

²³ The reference in *Mears v. Morrison*, 1 Ill. (Breese) 223 at 224 (1827), to the English cases of *White v. Cuyler*, 6 T. R. 176, 101 Eng. Rep. 497 (1795) and *Wilkes v. Back*, 2 East 142, 102 Eng. Rep. 323 (1802), was probably gleaned from a note to the holding in *Duvall v. Craig*, 15 U. S. (2 Wheat.) 45, 4 L. Ed. 180 at 183 (1817).

in the New York decisions included in Johnson's Reports,²⁴ in the volumes of Kentucky cases reported by Bibb,²⁵ or by direct borrowing from Blackstone.²⁶ It is utterly unlikely, therefore, that the Illinois court then had at hand a single volume containing the decisions of English courts or it would not, even after making allowance for printer's errors, have perpetrated the fault of purporting to quote from sources not in point²⁷ or to serve up as verbatim quotation matter which, while generally accurate in essence, never appeared at the place to which it was attributed.²⁸

It is not so easy to rule out the presence in the locality of the court of the several textbooks which were mentioned in certain of the opinions.²⁹ No one would be surprised to learn that the court probably had access to a copy of Blackstone, and cited to it in no less than eight instances, although it is not now possible to determine which one of the many American editions was at hand.³⁰ At times, the court merely gave the essence of the original Black-

²⁴ The first external reference made by the court, used in the case of *Cornelius v. Boucher*, 1 Ill. (Breese) 32 at 33 (1820), was to the holding in *Thompson v. Button*, 14 Johns. Rep. 84 (N. Y., 1817), from which case the court also undoubtedly secured the additional reference to *Hawks v. Crofton*, 2 Burr. 698, 97 Eng. Rep. 520 (1758), said to be an additional authority in support of the court's opinion. The English case was cited in the New York decision. Other instances are set forth in Appendix A.

²⁵ The cryptic citation in *Garner v. Willis*, 1 Ill. (Breese) 368 at 369 (1830), to "Salkeld, 320" is undoubtedly intended for the case of *Smallcomb v. Buckingham*, 1 Salk. 320, 91 Eng. Rep. 283 (1698), which was noted in the case of *Tabb v. Harris*, 4 Bibb 29 (Ky., 1814), also cited by the Illinois court.

²⁶ In *Ackles v. Seekright*, 1 Ill. (Breese) 76 at 78 (1823), the court cited 12 Mod. 287 and 1 Vern. 164, without giving any names. Bl. Comm., II, 173, lists both of these references in a note with no further information. Blackstone, without doubt, had in mind the cases of *Duke of Norfolk v. Howard*, 1 Vern. 164, 23 Eng. Rep. 388 (1683), and *Scattergood v. Edge*, 12 Mod. 278, 88 Eng. Rep. 1320 (1700). These cases were also picked up in Kent, Comm., I, 492, and IV, 17, 214c, 266, and 268c, but these volumes did not appear until after the opinion in question had been handed down.

²⁷ The opinion in *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 109 (1825), refers to, and purports to quote from, Esp. N. P. 665 and 668. Nothing like the quoted material is given in 2 Esp. 665, 668, 170 Eng. Rep. 490-1 (1798). For lack of a case name, it is impossible to verify the accuracy of the statements made by the Illinois court.

²⁸ The alleged quote in *Phoebe v. Jay*, 1 Ill. (Breese) 268 at 276 (1828), from Saund. 285, note 5, probably came from Archbold, Civil Pleading, 351, rather than from the opinion in *Duppa v. Mayo*, 1 Wm. Saund. 282 at 285, 85 Eng. Rep. 366 at 370 (1682).

²⁹ A complete list of these texts and other secondary authorities appears in Appendix B.

³⁰ In *Coles v. County of Madison*, 1 Ill. 154 at 156 (1826), the court does make mention of Judge Tucker's "notes on the Commentaries of Blackstone."

stone text;³¹ on other occasions, whether quoted or not, the language precisely follows the source to which it was attributed,³² but there is some evidence that the court did not always give close attention to the master text, if a copy was at hand, for it may be said that two of the references are scarcely in point.³³

Again, it would be expected that the court would have had access to Kent's Commentaries following the publication of the first volume thereof in 1826, and this is borne out by the precision with which the court quoted therefrom,³⁴ but it is quite unlikely that copies of the other texts or secondary authorities mentioned were at hand for it is possible to identify at least some of these references as being drawn from opinions in certain of the New York cases relied on.³⁵ Still others, by contrast, cannot be so readily identified, hence it might be presumed that either the judges or the practicing lawyers may have shelved these volumes and cited from them,³⁶ so the available textual materials may not have been so slender as to be limited to Blackstone and Kent.

³¹ This is the case with respect to the citation to Bl. Comm., I, 88, appearing in *Woodworth v. Paine's Adm'rs*, 1 Ill. (Breese) 374 at 376 (1830).

³² See, by way of illustration, the opinion in *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 157-8 (1826), which gives an accurate verbatim quotation from Bl. Comm., II, 436-7, although the same is erroneously assigned as being in Vol. II, at p. 442. There is another quotation from Bl. Comm., II, 325, in the case of *Doe ex dem. Moore v. Hill*, 1 Ill. (Breese) 304 at 313 (1829). It is quite likely, however, that the purported text borrowed from Bl. Comm., II, 307, in the opinion in *Herbert v. Herbert*, 1 Ill. (Breese) 354 at 360 (1830), was taken from the opinion in *Jackson v. Phipps*, 12 Johns. Rep. 419 (N. Y., 1815), rather than from the original text.

³³ Such would seem to be true as to the references made to Bl. Comm., II, 465, and III, 389, in the opinion in *Woodworth v. Paine's Adm'rs*, 1 Ill. (Breese) 374 at 376 (1830).

³⁴ Direct quotation from Kent, Comm., I, 434, is made in the opinion in *Phoebe v. Jay*, 1 Ill. (Breese) 268 at 275 (1828). The exact page reference, however, should have been 464. In two other instances, the language in the opinion of the Illinois court, although not quoted, is taken verbatim from the source: *Nance v. Howard*, 1 Ill. (Breese) 242 at 245 (1828), and *Doe ex dem. Moore v. Hill*, 1 Ill. (Breese) 304 at 312 (1829), each contains a reference to Kent, Comm., I, 433. The page reference is an error, as p. 463 was probably the one intended.

³⁵ The citations to 1 Kyd on Corporations, pp. 292-3, and Buller's Nisi Prius, 107, contained in the opinion in *Hargrave v. The Bank of Illinois*, 1 Ill. (Breese) 122 at 123 (1825), quite likely were borrowed from the opinion in *Jackson ex dem. v. Plumb*, 8 Johns. Rep. (N. Y., 1811). The reference in *Herbert v. Herbert*, 1 Ill. (Breese) 354 at 360 (1830), to 1 Shep. Touchstone 57-8 and to Viner's Abr., 27, § 52, undoubtedly came from the opinion in *Jackson v. Phipps*, 12 Johns. Rep. 419 at 422 (N. Y., 1815).

³⁶ The practice of prefacing the opinion with the briefs of the respective parties appears to have been adopted in 1831, with the opinion in *Kerr and Bell v. White-*

When the Illinois court mentioned American cases in support of its holdings, however, there is every reason to believe that, sparse as its library may have been, the court did have access to the original reports then published not only of the United States Supreme Court but also those from the states of Connecticut, Kentucky, Massachusetts, New York, Ohio, Pennsylvania, and Virginia.³⁷ The eminence of Chancellor Kent, then sitting in New York, no doubt provides the explanation for the extensive use of, and reliance on, the New York holdings. The geographic location of the state, formerly a part of the Northwest Territory, could be the answer for the presence in Illinois of reports from Ohio and Virginia, and possibly also those from Connecticut which had, at one time, asserted territorial claims in the area. The Kentucky reports would also be at hand as it was the home state of many of the early settlers. It is not certain, however, that the court possessed, or had access to, the reports of Massachusetts³⁸ and the one reference to a Pennsylvania decision³⁹ could well have originated in an American edition of a textbook on Constitutional Law which the court cited on two occasions.⁴⁰

One endeavoring to reconstruct the then available library of the early Illinois Supreme Court, as determined from the presence, or absence, of external citation in the court's opinions, would

side, 1 Ill. (Breese) 390 (1831). To what extent, prior to that time, the court relied upon or cited the references, if any, so supplied, cannot now be determined. It may be noted that, in the few instances, where the briefs were set forth, the court, in the course of the opinion, made no reference whatever to the material supplied by the lawyers.

³⁷ The American cases relied on by the Illinois court in the course of its opinions are listed in Appendix C.

³⁸ The blind reference in the opinion in *Mears v. Morrison*, 1 Ill. (Breese) 223 at 224 (1827), to holdings in 4 Mass. 595 and 5 Mass. 299 might well have been drawn from a note to the opinion of the United States Supreme Court in *Duvall v. Craig*, 15 U. S. (2 Wheat.) 45, 4 L. Ed. 180 at 183 (1817), which lists the cases of *Tippets v. Walker*, 4 Mass. 595 (1808), and *Thacher v. Dinsmore*, 5 Mass. 299 (1809). Other Massachusetts citations may have been included in available texts such as one of the American editions of *Starkie on Evidence*. The influx of settlers from the New England area did not come until later in the 19th Century.

³⁹ The case of *Commonwealth v. Duane*, 1 Binney 601 (Pa., 1809), is cited in the opinion in *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 159 (1826).

⁴⁰ *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 107 (1825), and *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 159 (1826), both refer to *Sergeant, Constitutional Law* (A. Small, Philadelphia, 1822), one of the first of a long line of treatises on that subject.

probably reach the conclusion that the bare minimum of books needed for this purpose would have totalled 114 volumes consisting of the following

1. United States Supreme Court reports ⁴¹	24 vols.
2. Connecticut reports ⁴²	8 vols.
3. Kentucky reports ⁴³	7 vols.
4. New York reports ⁴⁴	30 vols.
5. Ohio reports ⁴⁵	4 vols.
6. Virginia reports ⁴⁶	29 vols.
7. Miscellaneous texts ⁴⁷	12 vols.
<hr/>	
Total	114 vols.

plus copies of the session laws and the Illinois revised statutes. To this collection there might, perhaps, have been added a few volumes from Pennsylvania and Massachusetts. Even taking the maximum figure as controlling, it still could be said that, by the standards of that day⁴⁸ and even more so by present-day stand-

⁴¹ Composed of reports by Dallas, 3 vols., Cranch, 9 vols., and by Wheaton, 12 vols. It should be remembered that some of these, as well as others mentioned in the five succeeding footnotes, were not published until late in the period in question. At the inception of that period, the court would necessarily have had fewer books to consult.

⁴² Made up of Kirby's Reports, 1 vol., Root, 2 vols., and Day, 5 vols.

⁴³ The published reports from Kentucky may have included a single volume by each of Hughes, Sneed, and Hardin, as well as the four volumes by Bibb. The court cited from only the last two mentioned reporters.

⁴⁴ Although other volumes of New York Reports had been published prior thereto, the court referred only to those issued by Johnson, made up of Johns. Cas., 3 vols., Johns. Rep., 20 vols., and Johns. Ch., 7 vols. It is not unlikely that Breese brought these books with him when he migrated to Illinois.

⁴⁵ Ohio decisions were not published prior to about 1823, and those handed down subsequent thereto and up to 1851 were printed at irregular intervals. Not more than four volumes of Ohio Reports could have been available during the period in question.

⁴⁶ If all the Virginia reports were at hand, which does not appear to be likely from the infrequency of citation, the list could not have exceeded 29 volumes, made up of Jefferson, 1 vol., Wythe, 1 vol., Washington, 2 vols., Va. Cas., 2 vols., Call, 6 vols., Henning and Munford, 4 vols., Munford, 6 vols., Gilmer, 1 vol., and Randolph, 6 vols.

⁴⁷ Appendix B contains a list of seventeen items, but it is doubtful if the court had access to more than twelve of the works tabulated there.

⁴⁸ Joseph Story, in an address to the Suffolk Bar, on September 4, 1821, as reported in 1 Am. Jurist (1829), made mention of the then existing 150 volumes of American decisions and the "almost incredible rapidity" with which the mass of the law was accumulating.

ards, the library of the court was inadequate, if not almost non-existent. Yet, despite these inadequacies, the court was able to function and, paralleling Marshall's own experience, capable of turning out some land-mark holdings.

It would be a happy fact to report, if such had been the case, that the copy of Breese's Reports which the author presented to the Chief Justice served to lighten the judge's labors. Whether it did or did not cannot now be determined. There is no external evidence that it did for in none of the opinions prepared by Marshall after the presentation is there so much as a reference to a single case included in the collection of decisions so assembled. If the Chief Justice did dip into the book, however, he must have experienced pleasure from noting the esteem accorded to him and his holdings. Out of a total of twenty references found therein to the determinations of the federal court, excluding three citations which precede Marshall's appointment as Chief Justice, ten were based upon Marshall's own opinions, while only six were taken from those by Story,⁴⁹ and no more than one each from Washington and Livingston.⁵⁰ In one instance, referring to the "great case of Marbury and Madison," the Illinois Supreme Court parenthetically referred to the federal court as a "tribunal filled with as enlightened and as able jurists as ever graced the judgment seat in this or any other nation."⁵¹ In another,⁵² the court quoted from the Chief Justice's work⁵³ saying that the principle there established had settled a variety of cases. He might, then, have understood why, political differences aside, the career of a great judge will always be a matter of inspiration to all men.

To return to the thesis mentioned above, this sampling of the product contained in the earliest of Illinois law books demon-

⁴⁹ In one instance, that of *Kimmel v. Shultz*, 1 Ill. (Breese) 160 at 170-1 (1826), the court took notice of the criticism which had been addressed to Story's opinion in *Mills v. Duryee*, 11 U. S. (7 Cranch) 481, 3 L. Ed. 411 (1813). Marshall's opinions, on the other hand, were accepted without any demur.

⁵⁰ Two of the court's references were to *per curiam* opinions.

⁵¹ Opinion by Lockwood, J., in *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 106 (1825).

⁵² *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 158 (1826).

⁵³ *Yeaton v. United States*, 9 U. S. (5 Cranch) 281, 3 L. Ed. 101 (1809).

strates that it was possible for judges, both federal and state, to write masterly opinions and to achieve monumental decisions without the need for voluminous references to the holdings of their predecessors. Is there not some reason to believe that modern judges, and lawyers too, could do a better job if they would concentrate on fundamentals and save themselves from the distractions provided by the multiplication of precedents? One seeking to resolve the seeming paradox that resort to the lesser could be superior to resort to the greater might find the answer in a remark attributed to William Herndon when he said, speaking of another great lawyer from Illinois, "Mr. Lincoln *read less and thought more* than any man in his sphere in America."

APPENDIX A

ENGLISH CASE REFERENCES found in the opinions contained in Breese's Reports (1 Ill.) and some pertinent information with respect thereto are set forth below. The references are arranged in the order in which they appear in the volume. The page citation enclosed in brackets is to the initial page of the opinion wherein the reference appears. Omitted case names have been supplied.

[76] *Scattergood v. Edge*, 12 Mod. 278, 88 Eng. Rep. 1320 (1700), probably gleaned from Bl. Comm., II, 174; [76] *Duke of Norfolk v. Howard*, 1 Vern. 164, 23 Eng. Rep. 388 (1683), also cited in Bl. Comm., II, 174; [76] *Goodright ex dem. v. Searle*, 2 Wils. K. B. 29, 95 Eng. Rep. 668 (1756), probably taken from the opinion in *Jackson v. Robins*, 16 Johns. Rep. 537 (N. Y., 1819); [102] *Rex v. Wheatly*, 2 Burr. 1125, 97 Eng. Rep. 746 (1761), mentioned in *People v. Babcock*, 7 Johns. Rep. 201 at 204 (N. Y., 1810); [104] unnamed references to Esp. N. P. 665 and 668, but the alleged quotations, not otherwise verifiable, do not appear in the cases listed in 2 Esp. 665 and 668, 170 Eng. Rep. 490-1 (1798); [104] *Rex v. Bankes*, 3 Burr. 1412, is probably intended to be 3 Burr. 1452, 97 Eng. Rep. 922 (1764), but the direct source cannot be ascertained; [122] unnamed case in 2 Ld. Raym. 1535, is probably a reference to the case of *Henriques v. Dutch Company trading to the West Indies*, 2 Ld. Raym. 1532, 92 Eng. Rep. 494 (1729), which was cited in the opinion in *Jackson ex dem. v. Trustees of Union Academy*, 8 Johns. Rep. 378 (1811); [135] reference to a case named *Murray v. Sommerville*, said to have been determined at sittings after Hilary Term by Lord Ellenborough, but no such case is listed in the table of cases included in the

several volumes of the English Reprint; [154] citation to a case said to be *Coleman v. Shower* in 2 Show. at page not indicated, not to be confused with *Coleman v. Sherwyn*, 1 Show. K. B. 79, 89 Eng. Rep. 462 (1689), which is not in point as it deals with a covenant in a lease rather than a promise in consideration of marriage, but is more likely to be a reference to *Helmores v. Shuter*, 2 Show. K. B. 16, 89 Eng. Rep. 764 (1690), squarely in point and referred to in the opinion in *Dash v. Van Kleeck*, 7 Johns. Rep. 477 at 485 (N. Y., 1811); [154] *Couch qui tam v. Jeffries*, 4 Burr. 2460, 98 Eng. Rep. 290 (1769), may be found cited in the American case last mentioned; [221] citation to *Lloyd v. Maund* in 2 Durnford and East 760, more correctly cited as 2 T. R. 760, 99 Eng. Rep. 410 (1788), cannot be identified with any known work likely to have been in the possession of the court; [223] *White v. Cuyler*, 6 T. R. 176, 101 Eng. Rep. 497 (1795), probably borrowed from a note to *Duvall v. Craig*, 15 U. S. (2 Wheat.) 45, 4 L. Ed. 180 at 183 (1817); [223] *Wilks v. Back*, 2 East 142, 102 Eng. Rep. 323 (1802), also cited in note last mentioned; [268] unnamed case in 1 Saund. 285, note 5, from which purported quotation was taken, was probably intended for the case of *Duppa, ex'r v. Mayo*, 1 Wm. Saund. 282 at 285, 85 Eng. Rep. 366 at 370 (1682), where the essence of the point is expressed but the direct quote was probably extracted from Archbold, Civil Pleading, p. 351; [361] *Hill v. Bateman*, Stra. 710, more correctly cited as 2 Strange 710, 93 Eng. Rep. 800 (1739), probably taken from the opinion in *Warner v. Shed*, 10 Johns. Rep. 138 at 140 (N. Y., 1813); [361] *Case of Marshalsea*, 10 Co. 76(a), 77 Eng. Rep. 1027 (1613), also taken from the American case last mentioned; [368] unnamed case in Salk. 320, probably intended for *Smallcomb v. Buckingham*, 1 Salk. 320, 91 Eng. Rep. 283 (1698), mentioned in opinion in *Tabb v. Harris*, 4 Bibb 29 (Ky., 1814); [374] unnamed case in 3 Burr. 1548, probably intended for *Bidleson v. Whytel*, 3 Burr. 1545, 97 Eng. Rep. 972 (1764), cannot be traced to any secondary source.

APPENDIX B

REFERENCES to texts and secondary authorities, both legal and otherwise, mentioned in the cases in Breese's Reports (1 Ill.), and comment as to the use of each, appears below. The works are arranged in alphabetical sequence by the names of the author. Where possible, note has been made of the edition which the court may have had at hand.

1. ARCHBOLD, The Law Relative to Pleading and Evidence in Civil Actions, 351, noted in *Phoebe v. Jay*, 1 Ill. (Breese) 268 at 276. If a copy was at hand, it must have been an imported one as the American edition first appeared in 1838, too late for use by the court in connection with the case noted.

2. MATTHEW BACON, *Abridgment of the Law*. An American edition, edited by Bird Wilson, was published in 1809. Vol. 4, 515, is cited in *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 111 (1825); Vol. 4, pp. 643 and 647, in *Doe ex dem. Moore v. Hill*, 1 Ill. (Breese) 304 at 312 (1829); and Vol. 5, pp. 437-8, in *Giles v. Shaw*, 1 Ill. (Breese) 219 at 220 (1827).

3. BLACKSTONE, *Commentaries on the Laws of England* (edition uncertain). Except for one unidentified reference in the case of *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 155, the court provided explicit, albeit sometimes erroneous, references as follows: II, 172 (more correctly 173), in *Ackless v. Seekright*, 1 Ill. (Breese) 76 at 78 (1823); II, 307, in *Herbert v. Herbert*, 1 Ill. (Breese) 354 at 360 (1830), but it is possible that the court may have secured its information from the opinion in *Jackson v. Phipps*, 12 Johns. Rep. 419 (1815); II, 325, in *Doe ex dem. Moore v. Hill*, 1 Ill. (Breese) 304 at 313 (1829); II, 442 (more correctly 436-7), in *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 157-8 (1826); II, 465, in *Woodworth v. Paine's Adm'rs*, 1 Ill. (Breese) 374 at 376, but the reference is scarcely in point to support the doctrine there mentioned; and III, 389, in the place last mentioned.

4. BULLER, *An Introduction to the law relative to trials at nisi prius* (Probably an edition published by I. Riley, New York, 1806, from the last London copy). The one reference to this work, mentioned in *Hargrave v. The Bank of Illinois*, 1 Ill. (Breese) 122 at 123 (1825), could have been borrowed from the opinion in *Jackson ex dem. v. Plumbe*, 8 Johns. Rep. 378 (1811).

5. CHITTY, *A Practical Treatise on the Criminal Law* (Ed. by Earle, Philadelphia, 1819). I, 38, is mentioned in the opinion in *Flack & Johnson v. Amboy*, 1 Ill. (Breese) 187 at 188 (1826), and I, 204-5, is cited in *Curtis v. People*, 1 Ill. (Breese) 256 at 260 (1828).

6. CHITTY, *A Practical Treatise on Pleading and Parties to Actions* (2d Am. Ed., by Thomas Day, New York, 1812). There is only one citation to this work, to be found in *Woodworth v. Paine's Adm'rs*, 1 Ill. (Breese) 374 at 375 (1830). The vogue for citing Chitty probably developed after the adoption of the Hilary Rules in 1834, by which time the art of common law pleading had become something of an intricate maze.

7. DANE, *Abridgment*. A single reference was made to this work in the case of *Woodworth v. Paine's Adm'rs*, 1 Ill. (Breese) 374 at 376 (1830). Breese, with Baker, served as counsel for the plaintiff in error therein and secured a reversal of the judgment. He may have furnished the court with this citation from his private library as he appears to have

used the same, as well as certain of the other texts, quite freely when preparing his notes to the opinions. See, for example, Breese's notes to the cases in 1 Ill. 172, 176, 187, 217, 256, 293, 343, and 354.

8. JACOB, *Law Dictionary* (1st Am. Ed., I. Riley, New York, 1811). The case of *Vincent & Bertrand v. Morrison*, 1 Ill. (Breese) 227 at 228 (1827), mentions this publication in connection with a definition of the requirements for special verdicts. This book, on the basis of the inference aforementioned, may have also been in Breese's library.

9. KENT, *Commentaries on American Law*. Only three references were made during the period to this standard American treatise, probably because the later volumes were not issued until near the close thereof. All three were taken from Vol. I, which was released in 1826, and are substantial repetitions of the same point, cited as appearing on pp. 433-4 but more correctly cited as pp. 463-4. See *Nance v. Howard*, 1 Ill. (Breese) 242 at 245 (1828); *Phoebe v. Jay*, 1 Ill. (Breese) 268 at 276 (1828); and *Doe ex dem. Moore v. Hill*, 1 Ill. (Breese) 304 at 312 (1829).

10. KYD, *A Treatise on the Law of Corporations* (J. Butterworth, London, 1793-4). Pages 292-3 were cited in the case of *Hargrave v. The Bank of Illinois*, 1 Ill. (Breese) 122 at 123 (1825). Since this reference appears to have been borrowed from the opinion in *Jackson ex dem. v. Plumbe*, 8 Johns. Rep. 378 (N. Y., 1811), it is unlikely that this text was available for consideration by the court.

11. SELLON, *Practice of the Court of King's Bench and Common Pleas* (Gould, Banks & Gould, New York, 1813). Vol. II, 244, is referred to in *Cromwell v. March*, 1 Ill. (Breese) 295 at 296 (1829). The case was another in which Breese, of counsel for the plaintiff in error, secured a reversal. As the briefs were not included in the reported opinion, the source is uncertain, but the book may have been another in Breese's own library.

12. SHEPPARD, *The Touchstone of Common Assurances* (J. & W. T. Clarke, London, 1820-1), I, 57-8. The reference to this text was, without doubt, procured from the opinion in *Jackson v. Phipps*, 12 Johns. Rep. 419 at 422 (N. Y., 1815), which case was also cited by the Illinois court in its opinion in *Herbert v. Herbert*, 1 Ill. (Breese) 354 at 360 (1830).

13. THOMAS SERGEANT, *Constitutional Law* (A. Small, Philadelphia, 1822). Two citations came from this treatise. In *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 107 (1825), Judge Lockwood quoted an entire paragraph therefrom, describing the work as an "able one" only "recently published on constitutional law" from which, because of the similarity between the federal and the state constitutions in this respect, he trusted he would be excused "for making a long extract." See also

Coles v. County of Madison, 1 Ill. (Breese) 154 at 156 (1826), which cites Sergeant, op. cit., 347.

14. STARKIE, *A Practical Treatise on the Law of Evidence*, Ed. by Metcalf (H. C. Carey and I. Lea, Philadelphia, 1826). There is a single reference to Vol. II, 47, of this publication in the case of *Snyder v. Laframboise*, 1 Ill. (Breese) 343 at 345 (1830). The case was another in which Breese was successful. He probably owned the book as he made several references thereto in his notes to the opinions. See, for example, 1 Ill. (Breese) 54, 263, 289 and 354.

15. SWIFT, *A Digest of the Law of Evidence* (Oliver D. Cooke, Hartford, 1810). The court in *Flack v. Harrington*, 1 Ill. (Breese) 213 at 214 (1826), made reference to this work and appears to have quoted from p. 800. It is not possible to trace the material so extracted to any of the New York cases mentioned in the opinion.

16. VINER, *A General Abridgment of Law and Equity* (G. G. J. Robinson, London, 1791-5). It is possible that the court's reference to 19 Vin. 514 in the opinion in *Woodworth v. Paine's Adm'rs*, 1 Ill. (Breese) 374 at 376 (1830), may have been taken from Dane's Abr., which was also cited. The reference to Vin. Abr., 27, § 52, in *Herbert v. Herbert*, 1 Ill. (Breese) 354 at 360 (1830), was clearly taken, with other English references, from the opinion in *Jackson v. Phipps*, 12 Johns. Rep. 419 at 422 (1815).

17. MISCELLANEOUS: In *Coles v. County of Madison*, 1 Ill. (Breese) 154 at 155 (1826), the court said: "It appears from the Federalist, a work which has been emphatically styled the text-book of the constitution, that the term was understood and used in this sense by the framers of that instrument," but it did not provide any page reference to this work. The absence of specific reference may have been an oversight but it is also possible that the court was speaking in a second-handed fashion. The same thing may also have been true of the reference, in *People ex rel. Ewing v. Forquer*, 1 Ill. (Breese) 104 at 117 (1825), to Niles' Register, a newspaper of prominence in that period which frequently reported on matters of political significance emanating from the national capital.

APPENDIX C.

AMERICAN CASES cited by the Illinois Supreme Court in the course of its opinions have been marshalled below by jurisdictions. There is enough internal evidence to support the belief that the court probably had access to each of the volumes listed in this appendix. The page reference enclosed in brackets is to the initial page of the opinion in 1 Ill. (Breese) wherein the reference occurs.

1. UNITED STATES SUPREME COURT: [154] *Vanhorne's Lessee v. Dorrance*, 2 U. S. (2 Dall.) 304, 1 L. Ed. 391 (1795); [154] *Ware v. Hylton*, 3 U. S. (3 Dall.) 199, 1 L. Ed. 568 (1796); [154] *Calder v. Bull*, 3 U. S. (3 Dall.) 386, 1 L. Ed. 648 (1798); [154] unnamed case cited as 1 Cranch 109, probably intended for *United States v. Schooner Peggy*, 5 U. S. (1 Cranch) 103, 2 L. Ed. 49 (1801); [395] unnamed case in 2 Cranch 127, 167, probably intended for *Head & Armory v. The Providence Ins. Co.*, 6 U. S. (2 Cranch) 127, 2 L. Ed. 229 (1804); [139] *Stead's Ex'r v. Course*, 8 U. S. (4 Cranch) 403, 2 Ld. Ed. 660 (1808); [154] *Yeaton v. United States*, 9 U. S. (5 Cranch) 281, 3 L. Ed. 101 (1809), with the court quoting from Marshall's opinion, 5 Cranch 281 at 283; [154] *United States v. Ship Helen*, 10 U. S. (6 Cranch) 203, 3 L. Ed. 199 (1810); [154] *Schooner Rachel v. United States*, 10 U. S. (6 Cranch) 329, 3 L. Ed. 239 (1810); [364] *Sheehy v. Mandeville*, 11 U. S. (7 Cranch) 208, 3 L. Ed. 317 (1812); [364] *Ferguson v. Harwood*, 11 U. S. (7 Cranch) 408, 3 L. Ed. 386 (1813); [169] *Mills v. Duryee*, 11 U. S. (7 Cranch) 481, 3 L. Ed. 411 (1813); [343] *Livingston & Gilchrist v. Maryland Ins. Co.*, 11 U. S. (7 Cranch) 506, 3 L. Ed. 421 (1813); [139] *Parker v. Rule's Lessee*, 13 U. S. (9 Cranch) 64, 3 L. Ed. 658 (1815); [125] *Drummond v. Magruder & Co.*, 13 U. S. (9 Cranch) 122, 3 L. Ed. 677 (1815); [378] and [223] *Duval v. Craig*, 15 U. S. (2 Wheat.) 45, 4 L. Ed. 180 (1817); [366] *Dugan v. United States*, 16 U. S. (3 Wheat.) 172, 4 L. Ed. 362 (1818); [139] *Williams v. Peyton*, 17 U. S. (4 Wheat.) 77, 4 L. Ed. 518 (1819); [340] *Ex parte Kearney*, 20 U. S. (7 Wheat.) 38, 5 L. Ed. 391 (1822); [343] unnamed case in 11 Wheat. 59, probably intended for *Etting v. The Bank of the United States*, 24 U. S. (11 Wheat.) 59, 6 L. Ed. 419 (1826); [378] *Chirac v. Reinicker*, 24 U. S. (11 Wheat.) 280, 6 L. Ed. 474 (1826).

2. CONNECTICUT: [139] unnamed case in 1 Day's Rep. 109, probably intended for *Tweedy v. Pickett*, 1 Day 109 (Conn., 1803), with the Illinois court quoting, at p. 141, the exact verbiage of headnote No. 1 to this case, but the same text also appears in the opinion in *Patrick v. Oosterout*, 1 Ohio (Hammond) 27 at 29 (1822), so the court may have borrowed from the last mentioned source; [180] *Hillhouse v. Chester*, 3 Day 166 (Conn., 1808), which cannot be identified with any secondary source known to be in the court's possession; [395] *Hartford Fire Ins. Co. v. Inhab. of Hartford*, 3 Conn. 15 (1819), which may have been borrowed from Kent, Comm., III, 376, note 1, for it is doubtful if the case is in point.

3. KENTUCKY: [190] *Cunningham v. Caldwell*, Hardin 131 (Ky., 1807); [130] *M'Lean and Bruner v. Lillard*, 1 Bibb 147 (Ky., 1808); [167] unnamed case in 1 Bibb 173 (Ky., 1808), probably intended for *Cowan v. Price*, in the margin of which case is a reference to the pre-

ceding Kentucky citation with a citation as Hardin 123, the same error made by the Illinois court in its reference thereto suggesting the possibility of a borrowing rather than a consultation of the original work; [167] unnamed case in 2 Bibb 192 (Ky. 1810), probably intended for *Holt's Ex'rs v. Graham*, a case in point; [368] unnamed case in 4 Bibb 29 (Ky., 1814), probably intended for the case of *Tabb v. Harris*, located at the place cited, from the opinion in which case the Illinois court probably borrowed one of its English references; [130] *Sanders v. Kentucky Ins. Co.*, 4 Bibb 471 (Ky., 1816); [165] unnamed case in 1 Littell's Rep. 64 (Ky., 1822), but most likely intended to be *Morris v. Barkley*, 1 Littell 66; [413] reference to 1 Littell's Rep. 225, but the reference is a doubtful one which cannot be clarified.

4. MASSACHUSETTS: [223] unnamed case in 4 Mass. 595, probably intended for the case of *Tippets v. Walker*, 4 Mass. 595 (1808), referred to in a note to *Duwall v. Craig*, 15 U. S. (2 Wheat.) 45, 4 L. Ed. 180 at 183 (1817), which may have been the true source of the court's information; [223] unnamed case in 5 Mass. 299, most likely the case of *Thacher v. Dinsmore*, 5 Mass. 299 (1809), but no doubt borrowed from the secondary source mentioned with respect to the preceding item; [413] unnamed case in 6 Mass. 272, probably intended for *Whitwell v. Atkinson*, 6 Mass. 272 (1810); [361] erroneous reference to a case said to be *Abbe v. Ward*, 8 Mass. 9, but in all probability intended for *Albee v. Ward*, 8 Mass. 79 (1811); [205] *Buffum v. Chadwick*, 8 Mass. 103 (1811); [227] *Sumner, Adm'r v. Williams*, 8 Mass. 162 (1811); [354] *Maynard v. Maynard*, 10 Mass. 456 (1813), which may have been borrowed from Starkie, Evidence, II, 476, also cited by the court; [354] *Loker v. Haynes*, 11 Mass. 498 (1814).

5. NEW YORK: [174] *Keating v. Price*, 1 Johns. Cas. 22 (1799); [125] *Smith v. Blagge*, 1 Johns. Cas. 238 (1800); [213] *Jones v. Percival*, 2 Johns. Cas. 49 (1800), but notice that the purported quotation from this case is not a verbatim one; [242] *Sable v. Hitchcock*, 2 Johns. Cas. 79 (1800), with the Illinois court correctly quoting from 2 Johns. Cas. 79 at 85; [256] *The People v. Olcott*, 2 Johns. Cas. 301 (1801), erroneously cited as being on p. 311; [104] *People v. The Mayor, Aldermen, etc., of the city of New York*, 3 Johns. Cas. 79 (1802), with a verbatim quotation taken from p. 79; [256] *People v. Curling*, 1 Johns. Rep. 320 (1806); [354] *Jackson v. Myers*, 3 Johns. Rep. 388 (1808); [354] *Jackson v. Harder*, 4 Johns. Rep. 202 (1809); [145] *Root v. Sherwood*, 6 Johns. Rep. 68 (1810), with inaccurate purported quotation from this case; [232] unnamed case, probably *Fenton, Adm'r v. Garlick*, 6 Johns. Rep. 287 (1810); [145] *Blackley v. Sheldon*, 7 Johns. Rep. 32 (1810); [102] *People v. Babcock*, 7 Johns. Rep. 201 (1810), the probable source of at least one

of the Illinois court's English references; [263] *People v. Jansen*, 7 Johns. Rep. 332 (1811), with a verbatim quotation from p. 338; [154] *Dash v. Van Kleeck*, 7 Johns. Rep. 477 (1811); which case is also cited in the opinion on p. 287; [122] unnamed case, probably *Jackson ex dem. v. Plumb*, 8 Johns. Rep. 378 (1811), another source for some of the English references used by the Illinois court; [354] *Smith ex dem. Teller v. Burtis*, 9 John. Rep. 174 (1812); [304] *Jackson v. Lawton*, 10 Johns. Rep. 23 (1813); [213] *Wallsworth v. M'Cullough*, 10 Johns. Rep. 93 (1813); [361] *Warner v. Shed*, 10 Johns. Rep. 138 (1813); [354] *Jackson v. Bush*, 10 Johns. Rep. 223 (1813); [354] *Smith v. Lorillard*, 10 Johns. Rep. 338 (1813); [354] *Jackson v. Phipps*, 12 Johns. Rep. 419 (1815); [378] *Garland v. Chattle*, 12 Johns. Rep. 430 (1815); [32] *Thompson v. Button*, 14 Johns. Rep. 84 (1817); [180] unnamed case, probably intended for *Duncan v. Sandford*, 14 Johns. Rep. 417 (1817); [180] unnamed case in 16 Johns. Rep. 348 (1819), which is most likely a reference to *Palmer v. Lorillard*, a case generally in point; [76] *Jackson v. Robins*, 16 Johns. Rep. 537 (1819); [187] *Butler v. Potter*, 17 Johns. Rep. 145 (1819), with the Illinois court giving a verbatim quotation from 17 Johns. Rep. 145 at 146; [323] unnamed case, probably intended for *Yates v. Russell*, 17 Johns. Rep. 461 (1820), with the alleged quotation giving no more than the gist of the holding; [145] *People v. M'Kay*, 18 Johns. Rep. 212 (1820); [169] *Robertson v. Smith and others*, 18 Johns. Rep. 459 (1821); [227] *N. J. & S. Bumpas v. Platner, Bay and Underwood*, 1 Johns. Ch. 213 (1814); [227] *Abbot v. Allen, Ex'r*, 2 Johns. Ch. 519 (1817), but note that the quotation at 1 Ill. (Breese) 228 is not a verbatim one; [94] *Duncan v. Lyon*, 3 Johns. Ch. 351 (1818), which case is also referred to in 1 Ill. (Breese) 167; [343] references to two cases in 5 Johns. Ch. 29 and 79, probably intended for the cases of *Chesterman v. Gardner* and *Gouveneur v. Elmendorf* which appear at the pages cited.

6. OHIO: At page 139, the Illinois court mentions the only Ohio case it cited during the period in question. The reference is to *Patrick v. Oosterout*, 1 Ohio (Hammond) 27 (1822).

7. PENNSYLVANIA: The only Pennsylvania reference, appearing at p. 154, is to the case of *Commonwealth v. Duane*, 1 Binney 601 (1809), which reference the court may have obtained from a textbook on Constitutional Law, also referred to at that place.

8. VIRGINIA: [198] unnamed case, probably intended to be *Braxton v. Winslow*, 1 Wash. 31 (Va., 1791); [413] unnamed case cited to be in 2 Wash. 173 (Va., 1796), which is the location of the case entitled *Overton v. Hudson* but which is scarcely precedent for the point at hand, with the case of *Gordon v. Frasier & Cosbie*, 2 Wash. 130 (Va., 1795), serving as a more suitable authority and the one probably intended; [366] reference

to *Lansdale v. Brown*, said to be at 3 Wash. 404 but which reference is clearly erroneous as Washington's Reports consisted of only two volumes and no case of that name appears in either volume; [285] *Mantz v. Hendley*, 2 Hen. and Munf. 308 (Va., 1808); [180] unnamed case, probably intended for *Murdock v. Herndon's Ex'rs*, 14 Va. (4 Hen. and Munf.) 200 (1809).

A quick glance at the material contained in this appendix will reveal that the Illinois Supreme Court made most frequent reference to New York cases, with the decisions of the United States Supreme Court serving as the most frequent source of information. As Sidney Breese came to Illinois from New York, and most of the books comprising the three sets of Johnson's Reports were published before 1818, it is quite likely that Breese brought these volumes with him when he migrated to the frontier. If so, the size of his library probably exceeded any other then in the state.